

EVOLUTION OF RAWLS'S CONCEPTION OF JUSTICE IN THE CONTEXT OF SANDELIAN CRITIQUE

Rafał Prostać

A Theory of Justice by John Rawls was translated into Polish at the beginning of 1994. This publication aroused wide interest in Rawls and his ideas in our country. Despite the fact that the original English version was published in 1971, it is not easy to find an exhaustive analysis of the Rawlsian version of Anglo-Saxon liberalism in Polish. At the moment of the dissemination of the Polish edition of *A Theory...* this need became even more noticeable.¹ Some attempt to bring closer the knowledge of Rawls and his output were taken up, among others, by Ryszard Legutko and Wojciech Sadurski.² However, analyses by these authors should be treated rather as an encouragement for other research than an attempt to close the discussion. Since 1994 one can notice widespread interest in *A Theory...* accompanied by an increase in the number of followers and opponents of its author. Meanwhile, Rawls has changed his viewpoint significantly. The process of his standpoint verification can be observed when one scrutinizes the content of Rawls's articles published between 1975-1993. The process stopped in 1993 with the publication of *Political Liberalism*. Five years later a Polish reader received a translated edition of *Political...*³ In such a short period of time both main works of Rawls became available in Polish. Although a wide discussion of *A Theory...* has not been completed, we already have to challenge *Political...*⁴ The Anglo-Saxon world had 22 years at its disposal. We, much less. Therefore it is obvious that comparison of previous and current versions of Rawls's perception of justice in the field of Polish political science is desirable. This is the main aim of the author of the article. It is not going to be an exhaustive presentation of the Rawlsian conception of justice as such, but an attempt to indicate the scope of changes between *A Theory...* and *Political...*

Almost immediately after publication, *A Theory...* has gained the status of a classical work. In the field of Anglo-Saxon political theory and ethics there is no outstanding work that does not somehow try to confront *A Theory...* Therefore it is

¹ Rawls J., *Teoria sprawiedliwości*, translated by Maciej Panufnik, Jarosław Pasek, and Adam Romaniuk, Warszawa: PWN 1994.

² Legutko R., *Dylematy kapitalizmu*, Paris: Editions Spotkania 1986.

Sadurski W., *Neoliberalny system wartości politycznych*, Warszawa: PWN, 1980; *Teoria sprawiedliwości. Podstawowe zagadnienia*, Warszawa: PWN 1988.

³ Rawls J., *Liberalizm polityczny*, translated by Adam Romaniuk, Warszawa: PWN 1998.

⁴ Rawls maintains that *Political...* is not a new, corrected version of his vision of justice but only an attempt to clarify his original viewpoint and to explain some misunderstandings raised after publishing *A Theory...* But the scope of changes and their importance lets us contend that he actually has changed his original standpoint significantly.

impossible to overestimate Rawls's contribution in the development of contemporary political philosophy. Many well-known works of other outstanding authors were based on criticism or at least a reflection of *A Theory...* Here one ought to mention *Anarchy, State and Utopia* by Robert Nozick (1974) and *Liberalism and the Limits of Justice* by Michael Sandel (1982). We should pay special attention to Sandel's accomplishment. Publication of *Liberalism...* can be perceived as the birth of a new stream of Anglo-Saxon political thought called communitarianism. Its leading theorists are Alasdair MacIntyre, Charles Taylor, Michael Walzer, and Amitai Etzioni, who came to Sandel's aid in critical formulation. All of them have challenged Rawls's thought. Communitarianism has attained a very significant position in the USA and Canada, gaining also many followers in Great Britain and Australia. Its criticism of liberalism, represented among others by Rawls's theory, increased the ideological deliberation between these streams of political thought in the last decade. We can presume that the communitarian critique influenced the direction of Rawls's changes of his viewpoint. However, opponents of this contention maintain that Rawls started modification of his vision of justice in 1975, when his article *Fairness to Goodness* was published. Regardless, communitarians participated in presenting some charges to which Rawls has had to respond. It seems that *Political...* is an aftermath of that reaction. To conceive of reasons for modifications of *A Theory...* is impossible without apprehension of the communitarian critique of contemporary individualistic liberalism. To satisfy that demand, an attempt to explain the clue of this confrontation will be taken into consideration in this article, though in a concise form. More attention will be paid to the Sandelian critique of *A Theory...*, because of his evident interest in criticizing Rawls's thought and because of the fact that he is one of precursors of communitarianism.

The author presumes that the reader is already familiar with the basis of Rawls's political philosophy.

I. THE EVOLUTION OF RAWLS'S VISION OF JUSTICE

The starting point of *A Theory...* is the presentation of a concept of "the original position". The reason for introducing this concept is to explain how "the two principles of justice" are recognized and defined. This is the guiding idea of the Rawlsian theory of justice that arouses most of controversies. It is also the point that became the main target of Sandel's attack and has been modified to the largest extent. The changes in the idea of the original position determined modifications in other elements of the Rawlsian vision of justice. Therefore, this analysis starts with the presentation of changes in the idea of the original position.

1. The Original Position

1.1. One of the main mechanisms Rawls used to construct his vision of justice was to carry to a higher level of abstraction the theory of social contract. Contrary to classics of liberal thought, he does not intend to show us the genesis of society's foundation. He tries to focus our attention on the clue of social contract which is expected to establish some principles of: a) basic rights and duties; and b) the division of social benefits. These principles must be accepted by everybody and serve as a regulator of social behavior and the conduct of social institutions.⁵

⁵ By institutions Rawls means a public system of rules which defines offices and positions

Having respect for the liberal tradition, Rawls assumes that individuals have different needs, life plans, expectations and patterns of behavior the rights of which should be guaranteed, as long as they do not violate the same rights of others. A consequence of this presumption the adoption of a hypothesis that people also have different visions of freedom. But, as Rawls maintains, they do not. He proves that rational people single out one conception of justice: justice as fairness.⁶

Fairness has two meanings in this context.

First, fairness must be an intrinsic feature of justice. Public institutions in the liberal state are fair if they impose the same rights and duties on everybody irrespectively, and if they fairly determine the division of advantages from social cooperation.⁷

Second, fairness is understood as the objective conduct of participants of the social contract, based on a vision of justice approved unanimously. The fact that the parties of the contract are going to choose this particular vision of justice (justice as fairness) is derived from the special situation of the original position. Individuals in the original position reject flawed conceptions of justice, by employing the "maximum rule". This rule says that persons in the original position adopt a vision of justice which the worst outcome is superior to the worst outcomes of others.⁸ To use the "maximum rule" requires rationality. This rationality is limited by lack of necessary information available for those people to make the best choices. Rawls introduces the term "the veil of ignorance."⁹ The veil of ignorance makes our perception in the original position very limited. This limitation is common and means that all people occupy the same starting point in the original position. The veil of ignorance makes all of us ignorant about our place in society, our class position or social status. We have no knowledge about natural features (intelligence, strength and other physical and mental properties) and our conception of a good, rational, and valuable life. We do not even know to which generation we belong.¹⁰ So we can say that we do not perform any unique wisdom based on a complex conviction about our existence. We only have access to some knowledge about political affairs and the principles of economic theory. We know the basis of social organization and some rules of human psychology. This gives us some image of a human being's place in the world, though it remains pretty shallow.¹¹ What makes justice as fairness stable is the fact that, as Rawls maintains, it is true.

1.2. We can also find the idea of the original position in *Political...* The idea that justice as fairness is not derived from complex conviction is also present in *Political...* This kind of complex conviction is now called a "comprehensive doctrine" which can be religious, philosophical or moral. But the source of principles of justice identification is different in *Political...* In *A Theory...*, the principles are identified through our consciousness of true psychological rules and basic knowledge about the world. In *Political...* this incontestable conviction is no longer an issue.

with their rights and duties, powers and immunities. In other words, the political constitution and the principal economic and social arrangements.

⁶ Rawls J., *A Theory...*, p. 3.

⁷ Ibid., p. 7.

⁸ Ibid., p. 152–153.

⁹ Ibid., p. 136–142.

¹⁰ Ibid., p. 136.

¹¹ Ibid., p. 453.

According to the present viewpoint, Rawls admits that the choice of the two principles of justice depends on the political culture of contemporary democratic society. In this society some universal and intuitive ideas are common. Therefore principles of justice are worked out by individuals who share these common intuitive ideas. Despite the fact that Rawls does not deny, in *A Theory...*, that intuition takes a part in principles of justice identification, he tries to replace it with rationality. The priority of rationality is supposed to guarantee the truthfulness and stability of the principles.¹²

The first sign of verification of Rawls's position can be seen in *Justice as Fairness: Political not Metaphysical*, published in 1985, where he says:

"Thus the aim of justice as fairness, as political conception is practical, and not metaphysical or epistemological. That is, it presents itself not as a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens view as free and equal."¹³

He has maintained his new position in following publications and eventually confirmed it in *Political...*, where he says that in the process of the identification of the two principles of justice an extraordinary role is played by intuitively recognized ideas: a) that society should be a fair system of cooperation; and b) that people are free and equal. The rationalism of *Political...* differs from the version presented in *A Theory...*. Now it becomes political constructivism, subtly differentiated from rational intuitionism and Kant's moral constructivism.¹⁴ The principles of justices are worked out as a form of practical agreement. Practicality of the way the contract is worked out replaces the property of "truthfulness" of justice as fairness. This is what is supposed to guarantee the stability of the principles of justice as fairness in *Political...*

1.3. In *Political...* Rawls envisions the original position as an instrument of representation. Individuals trying to work out principles of justice are not, as in *A Theory...*, metaphysical creatures generally conceived, but are representatives of citizens of the democratic regime who try to set democratic rules. This is an unusually significant modification. This operation caused some other important changes.

First of all, the veil of ignorance had to be pulled up a little bit. In accordance with new interpretation, individuals in the original position gain access to a very important piece of information. Namely, they know they are citizens of a regime of democratic political culture.

Second, they know which generation they belonged to. They are also aware of its democratic background.

2. The Self in the Context of Comprehensive Doctrines

2.1. Modifications, presented above, let Rawls reconfigure his vision of the self.

Individuals in the original position are not, as in *A Theory...*, rational when they make an agreement on the principles of justice, but they are rational and reasonable as well. A property of reasonableness which is possessed by individuals in the origi-

¹² Ibid., p. 40–46.

¹³ Rawls J., "Justice as Fairness: Political Not Metaphysical". *Philosophy and Public Affairs*, Summer no. 14, 1985, p. 229–230.

¹⁴ Rawls J., *Political...*, p. 89–107.

nal position is the aftermath of emphasizing in *Political...* an important difference between the idea of justice as fairness and any comprehensive religious, philosophical, or moral doctrines. The category of comprehensive doctrines is one of the fundamental terms of *Political...* Rawls uses this category to describe any complex set of moral or religious values and moral aspects of human life which are formulated by both theoretical and practical reason – using the dichotomy of Kant – and which are relatively stable in time.¹⁵

The property of rationality demands that individuals, picking out principles of justice in the original position, tend to favor, as much as possible, their own interest. They try to get as wide an access to primary goods as possible.¹⁶ This access will help them realize their ambitions and life plans, and help them promote their own conception of good. Individuals are not interested in the benefits or losses of other contract participants.¹⁷

The property of reasonableness demands in turn that contractors, proposing their own conceptions of justice, be ready to accept others' proposals only if they will be assured of the same behavior from others – that they will subordinate themselves to and abide by set principles. All participants contend that they are able to consider reasonably both their own and others' proposals. People acting reasonably possess a unique sense of morality differentiating them from the merely rational. The reasonable sense of justice allows us to rid ourselves of our selfish interests and propose rules which can serve our needs as well as others'. In this way what is reasonable becomes public, while what is only rational remains private.

To present individuals in the original position as reasonable allows Rawls to reconstruct his conception of the self. In the modified version the self is not only rational, but also able to reasonably reconsider its conduct for others' well-being.¹⁸

The requirement of this ability becomes natural if it is clear that individuals in the original position are supposed to represent not only themselves but also others.

2.2. At this moment it is helpful to present the differences between previous and current understanding of justice as fairness in the perspective of the theory of reasonable comprehensive doctrines.

A connection between the Rawlsian conception of the self as rational and reasonable, and comprehensive religious, philosophical, and moral doctrines is evident in *Political...* These comprehensive doctrines must be reasonable as well. Reasonable individuals are devoted to reasonable doctrines. Reasonable comprehensive doctrines appreciate an existence of other reasonable comprehensive doctrines. The dialogue between them, just like between rational and reasonable individuals, is based on the exchange of reasonable arguments and on the conviction that the agreement will be abided by everybody in spite of their original devotion to previ-

¹⁵ Ibid., p. 58–66.

¹⁶ Rawls divides these goods into two categories: the social primary goods – being at the disposal of social institutions which distribute them – liberty and opportunity, income and wealth, and the base of self-respect; and the natural primary goods, not under control of the social structure but whose possession can be, to some extent, influenced by it – health and vigor, intelligence and imagination, good-looks, natural talents etc. It is clear that only social primary goods can be distributed by the social structure. *A Theory...*, p. 62.

¹⁷ *A Theory...*, p. 142–150.

¹⁸ *Political...*, p. 48–54.

ous beliefs and convictions (their reasonable comprehensive doctrines). The agreement should be treated as a political conception of justice in a well-ordered society.¹⁹

In the case of *A Theory...* we do not encounter the category of reasonable comprehensive doctrine as differentiated from unreasonable. Complex conceptions of the good, systems of values, and life-aims are not considered in terms of reasonableness. These conceptions are perceived rather in the perspective of negative freedom (visions of good, values, and life-aims of the self should not violate the rights of others), than in the perspective of positive freedom, understood here as an attempt to work out rational and reasonable principles of justice as a common good. Thanks to this common good our personal good becomes available as well. One can observe the problem of putting emphasis on negative – (in the case of *A Theory...*) and positive freedom (in the case of *Political...*).

3. Justice and the Good

3.1. *A Theory...* is evidently deontological. Justice is envisioned here as the first virtue and feature of all social institutions.²⁰ Priority is understood as independence. "X is prior to Y if X (or notion of X) is independent of, or derived independently from, Y (the notion of Y).(....) such independence obtains if no change in (the notion of) Y makes a difference to (the notion of) X, if the latter can be understood without any understanding of former."²¹

Meanwhile, in *Political...* the deontological character of justice as fairness is softened a little. Priority of justice is still emphasized but Rawls admits that the idea of the good, which he called "thin", is absolutely necessary in understanding the sense of justice.²² Thus we can doubt if justice (X) can be understood without the idea of good (Y).

Rawls admits this already in *A Theory...*, when he concludes:

"Summing up these points, we need what I have called the thin theory of the good to explain the rational preference for primary goods and to explicate the notion of rationality underlying the choice of principles in the original position."²³

But a moment before, he assumes that:

"In contrast with teleological theories, something is good only if it fits into ways of life consistent with the principles of right already in hand. But to establish these principles it is necessary to rely on some notion of goodness, for we need assumptions about the parties' motives in the original position. Since these assumptions must not jeopardize the prior place of the concept of right, the theory of the good is restricted to the bare essentials."²⁴

¹⁹ Ibid., p. 58–66.

²⁰ *A Theory...*, p. 3.

²¹ Pogge T., *Realizing Rawls*, Ithaca New York 1989, p. 88. Pogge uses here the Sandelian interpretation of *A Theory...*, trying to prove that Sandel misunderstood the deontological background of Rawls's theory.

²² The thin theory of good is introduced to help us to identify primary goods in the original position, behind the veil of ignorance.

²³ *A Theory...*, p. 397.

²⁴ Ibid., p. 174.

However it seems that "restriction to the bare essentials" is not enough. The importance of the thin theory of good for understanding the priority of justice, makes Rawls pay sufficient attention to it in *Political...*:

"...since the right and good are complementary: no conception of justice can draw entirely upon one or other, but must combine both in a definite way. The priority of right does not deny this."²⁵

Is it still possible to be for the priority of right? It is not so obvious for Michael Sandel, for example. Since we take care of the right (justice) as much as of the good, we should not insist on the priority of right. If we are talking about the thin theory of good we should recall the sense of introducing this category, in order to identify fundamental rights and freedoms, income and wealth, and self-respect. All of these are goods of fundamental meaning and are as fundamental as the right is.

Rawls's defense against the charge of the pseudo-deontological character of justice as fairness is based on the assertion that the thin theory of good cannot, by nature, contradict the right. Therefore, an attempt to prove the priority of the thin theory of good over the idea of right is just a misunderstanding of *A Theory...*

3.2. We should pay special attention to the way in which the primary goods are identified in *Political...* They are not, as *A Theory...* assumes, the primary goods of a single and rational person, but the goods which are necessary, as representatives believe, to realize any conception of the good life, that is articulated by represented people in democratic regime. This identification demands again that we be both rational and reasonable. It is consistent with modifications to the original position and the self acting within it.

3.3. In this way the idea of good receives the right meaning in *Political...* This operation was necessary to introduce to the theory of justice as fairness a very important conception of virtue, as the element that stabilizes the well-ordered society.²⁶ A character of political virtues should be perceived as a development of a conception of a good citizen of the democratic society. These virtues have a pure political meaning and do not have to be practiced in private life. We are talking here about toleration, mutual trust, and the sense of justice and reason. Governmental support for these virtues is not, as Rawls maintains, a kind of paternalism. It is not a sort of promotion of any comprehensive "governmental" doctrine.²⁷

4. Justice as Fairness

4.1. The above deliberations about modifications of the previous meaning of the original position, the vision of the self in the context of reasonable comprehensive doctrines, and the good, are a kind of introduction to the analysis of the extent to which the concept of justice as fairness has changed. And changes are really significant. In *A Theory...* the two principles of justice are formulated as below:

First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

²⁵ *Political...*, p. 244.

²⁶ *Ibid.*, lecture I, § 6.

²⁷ *Ibid.*, lecture V, § 5.

Second Principle

Social and economic inequalities are to be arranged so that they are both:

- a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- b) attached to offices and positions open to all under conditions of fair equality of opportunity.²⁸

In turn, in *Political...* the first principle is: "Each person has an equal right to a fully adequate scheme of equal liberties which is compatible with a similar scheme of liberties for all."²⁹ There is a question of freedom here. "The most extensive total system of equal basic liberties" is replaced by a "fully adequate scheme of equal liberties". The exchange of "the most extensive" for "fully adequate" seems meaningless on the surface, but it is not. The importance of this change is founded on limitation of liberties catalog, guaranteed by the first principle. In *A Theory...* everything indefinitely called a basic freedom was protected by the first principle. But in *Political...*, we encounter a pretty limited list of freedoms. Among them are: "freedom of thought and liberty of conscience; the political liberties and freedom of association; freedoms specified by liberty and integrity of the person; rights and liberties covered by the rule of law."³⁰

Rawls justifies this move by the will to increase the protection of essential freedoms which are weakened when the list is open and ambiguous.³¹ Yet it looks like the main reason for the list limitation is to ensure the cohesion of the theory presented in *Political...* It is clear that the defined freedoms catalog is similar to the "liberation" part of social primary goods whose understanding, according to *Political...*, is closely connected to the new version of the original position, conception of the self as rational and reasonable, and idea of reasonable comprehensive doctrine.

Nevertheless, this modification did not affect the "priority rule" – the priority of the first principle over the second one (the priority of freedom); and priority of part b) over part a) of the second principle (the priority of justice over efficiency and welfare).

However, in *A Theory...* this priority depends on social conditions:

"It is only when social conditions do not allow the effective establishment of these rights that one can concede their limitation; and these restrictions can be granted only to the extent that they are necessary to prepare the way for a free society. The denial of equal liberty can be defended only if it is necessary to raise the level of civilization so that in due course these freedoms can be enjoyed."³²

Rawls assumes that parties in the original position know what kind of social conditions will secure the priority of equal freedom. If this is true one may doubt the cohesion of his theory (the question of the veil of ignorance). Besides, it is not clear if "limitations" apply only to the situation of the original position or to reality as well. It seems Rawls implies it is possible to suspend some freedoms in real society, when some conditions occur.

²⁸ *A Theory...*, p. 302.

²⁹ *Political...*, p. 291.

³⁰ *Ibid.*, p. 291.

³¹ *Ibid.*, p. 296.

³² *A Theory...*, p. 152; and in a similar way on p. 542.

In *Political...* the priority of freedom is unconditional.³³

4.2. Introduced changes concern also the scope of validity and the aim of the two principles of justice.

A Theory... does not employ a category of reasonable and comprehensive religious, philosophical, and moral doctrines. This lack causes a widening of the scope of use of justice as fairness. Despite this, principles of justice were supposed to be worked out under condition of the original position and to apply to the basic structure of society.³⁴ Rawls assumes some ability to extend the scope, at least partially. After some modification, justice as fairness could be used to regulate corporate associations and be a part of a law of nations.³⁵

A couple of years later Rawls confirmed a unique relationship between the category of reasonable comprehensive doctrine and the scope of the appliance of justice as fairness in his article *The Priority of Right and Ideas of the Good*, published in 1988:

"The distinction between a comprehensive doctrine and a political is absent from *A Theory...*, and while I believe nearly all the structure and substantive content of justice as fairness...is unchanged when it is seen as a political conception, the understanding of the view as a whole is very significantly shifted."³⁶

Political... does not aspire to validate the two principles of justice in a wider scope. On the contrary, the principles should be used only in the political spectrum, understood as the basic structure. In *A Theory...* the lack of distinction between a moral doctrine of justice (general scope) and the political-by-nature conception of justice is easy to notice. In *Political...* Rawls confines the scope to the basic structure of the democratic constitutional regime by reshaping the self behind the veil of ignorance that now is a representative, aware of the background of democratic political culture. Justice as fairness becomes a conception of people envisioned as citizens of democracy.

4.3. The aim of the principles of justice is also modified. According to *A Theory...* distribution of fundamental rights, duties and goods is the main purpose of the two principles of justice:

"A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive areas."³⁷

But *Political...* suggests that the main reason for accepting the two principles of justice is the necessity of establishing an overlapping consensus among comprehensive doctrines, presenting different visions of good, value, and virtue. A fair distribu-

³³ Often emphasized in lecture VIII of *Political...*

³⁴ Rawls calls the basic structure of society: the political constitution and principal economic and social arrangements – in other words, the legal protection of the freedom of thought and liberty of conscience; competitive markets, and private property in the means of production; and a monogamous family. *A Theory...*, p. 7.

³⁵ *A Theory...*, p. 8 and 143.

³⁶ "The Priority of Right and Ideas of the Good", *Philosophy and Public Affairs*, 17, 4, 1988, p. 254.

³⁷ *A Theory...*, p. 4.

tion of social primary goods and respect for the equal-freedoms-rule should always be in the background of this process.

The differences indicated above between the vision of justice as fairness as presented in *A Theory...* and *Political...* are illustrated by the following chart.

Rawlsian Theory of Justice as Fairness

| Presented in <i>A Theory of Justice</i> | Presented in <i>Political Liberalism</i> |
|---|--|
| 1. The original position | |
| The principles of justice are derived from true psychological rights and general knowledge about the world. Stability of the two principles of justice is based on this conviction. | The principles of justice are worked out thanks to intuitive ideas immanently existing in political democratic culture |
| The veil of ignorance is completely closed up | The veil of ignorance is slightly pulled up. |
| 2. Conception of the self | |
| Individuals are rational | Individuals are rational and reasonable |
| Individuals are self-interest-oriented | Individuals care for both their own and others' interests. |
| 3. Conception of the good | |
| Deontological character of justice of fairness | "Softened" deontology of justice as fairness strengthened by the idea of primary good |
| The primary goods identified by rational individuals | The primary goods identified by rational and reasonable individuals |
| 4. Justice as fairness | |
| Freedoms generally conceived in the first principle of justice | A limited catalog of liberties guaranteed by the first principle of justice |
| the priority rule depends on social conditions. | Unconditional priority of freedom |
| Potential ability to use the two principles of justice in other non-political spheres | Validity of the two principles of justice absolutely limited to the political sphere |
| The purpose: distribution of fundamental rights and duties, goods | The purpose completed by the need to overcome any conflicts arising among reasonable comprehensive doctrines |

Source: Rafal Proszak

II. THE COMMUNITARIAN CRITIQUE AND MODIFICATIONS OF JUSTICE AS FAIRNESS

As was indicated at the beginning, one can notice some analogies between the communitarian critique and the direction in which Rawls decided to modify his vision of justice. This does not mean that he has agreed with his ideological opponents and has accepted their position. Actually, his main aim was to rebut any accusations of the anti-social character of justice as fairness.

According to communitarians, Rawlsian philosophy is an emanation of liberal individualism, diminishing the role of society to create: the common good; the civic

virtue; and vision of the human good (as a form of social roles' fulfillment, indicated by a society). Rawls allegedly ignores the meaning of social tradition in establishing the self. His theory, as communitarians claim, does not secure social stability because of its imminent weaknesses which stem from its anti-social character. Liberal deontology excludes any theory of justice built on something other than moral relativism. This kind of theory cannot, in communitarian understanding, claim a right to universality.

Communitarian accusations result, followers of Rawls maintain, from a misunderstanding of justice as fairness, rather than from its flaws. It is enough to use *A Theory...* to refute these accusations.³⁸ However, subsequent articles and *Political...* help a lot in accomplishing this.

1. Michael Sandel as a Critic of *A Theory...*

1.1. This article excludes a full presentation of the communitarian critique of liberalism in Rawlsian form. It is limited instead to the achievement of Michael Sandel. This choice can be justified in two ways. First, Sandel is one of the precursors of communitarianism. Second, he devoted his great work to critiquing of *A Theory...*³⁹ The starting point of his communitarian manifesto was the thought of Rawls. Other communitarians such as: Alasdair MacIntyre, Charles Taylor, Michael Walzer or Amitai Etzioni – come to similar conclusions as Sandel, but they do not use *A Theory...* to the extent that he does. Therefore, I will limit my analysis of the communitarian critique of *A Theory...* to the author of *Liberalism and the Limits of Justice*.

1.2. The starting point of the Sandelian critique of *A Theory...* is the conception of the "antecedently individuated self", which allegedly Rawls invokes. To comprehend this concept we must employ the idea of the original position, in which contacts among people, the system of social roles, moral rules, and patterns of interaction have a secondary and, because of separation, marginal meaning. The primary meaning consists of the conception of justice as fairness. The antecedently individuated self approves the sole conception of justice as the final arbiter of ethical deliberations. Nothing can be good if it contradicts the rules of the two principles of justice. *Liberalism...* is thought to prove the falseness of this assumption.

1.3. According to Sandel, the theoretical base of Rawlsian thought creates its flaws.

Rawls, presenting his contractarian vision of society, does not abide by the rules of logical thinking, which makes his theory lack cohesion. Sandel cannot accept that the primary and only vision of the self interacting in the original position is this one contained in the two principles of justice. The conviction that we are separated individuals who voluntarily interact for mutual advantage, in no way establishing our identity, is untrue. Sandel maintains that Rawls does not understand the meaning of the dealing with others for our self-development.

However, Sandel does not neglect the meaning of justice for individual and social activity, but he does not at the same time accept Rawls's idea, illogical to him, that individuals in the original position, behind the veil of ignorance, are experi-

³⁸ This task was undertaken by Pogge in *Realizing Rawls*, Cornell University Press, Ithaca, New York 1989.

³⁹ *Liberalism and the Limits of Justice*, Cambridge University, Cambridge 1982.

enced enough to work out a common vision of justice. An assumption of separation of the self from its aims, interests, and obligations which determine not only behavior but also identity, makes human rationality too limited to manage this challenge.

This "disembodied self" does not possess enough knowledge, which can only be attained only by acting in a community, to be able to declare what is just and what is unjust.

The separation of the self and its endowments introduces the problem of the subject and the object of property. The subject of property is the self and the object is any voluntarily acquired, or by the lot assigned, endowments. Sandel perceives one of the crucial flaws of Rawls's theory in this separation. This makes the self lack the feeling of individual connection with its endowments. Their analysis makes it possible to answer the question of "what the self possesses"; excluding the ability to answer the question, "who is it?". By the same token, this separation rules out the pluralism of individuals in the original position. There are socially determined endowments that generate the existence of different objects. This fact is ignored by Rawls in *A Theory...* Therefore, as Sandel says, Rawls cannot maintain that the parties of the contract are situated differently. Their position is just the same. Consequently, there is no reason to talk about any social contract, since it assumes discussion, bargaining, and rejecting unwanted visions of justice presented by variously motivated individuals. Sandel contends, if in the original position any selection does not take place, we should rather talk about discovering principles of justice than about choosing them. If it is true the two principles of justice have to be determined. Thus we have to accept in turn that they are socially determined:

"As agents of construction we do not really construct and as agents of choice we do not really choose. What goes on behind the veil of ignorance is not a contract or an agreement but if anything a kind of discovery; and what goes on in 'purely preferential choice' is less a choosing of ends than a matching pre-existing desires, undifferentiated as to worth, with the best available means of satisfying them."⁴⁰

This controversial conception of endowments elucidates another logical flaw of *A Theory...* This time the critique is focused directly on the two principles of justice. Namely, on the difference principle – part (a) of the second principle. According to Sandel and Robert Nozick,⁴¹ who *nota bene* derives his convictions from liberal positions, this principle puts Rawls into conflict with the Kantian rule – to treat individuals always as an end and never only as a means: "Act so that you treat humanity, whether in your own person or in that of another, always as an end never as a means only."⁴²

The difference principle is supposed to be justified by an assumption that from a moral point of view nobody deserves his abilities and skills; they are arbitrary from a moral point of view. Therefore, we are not entitled to all of the benefits of their uses, whatever they turn out to be. Profits belong to the community what confirms the legality of the distributive policy assumed in the difference principle. This conclusion indeed arouses some controversies in the logical cohesion of Rawls's theory:

⁴⁰ Sandel M., *Justice and the Good in Liberalism and its Critics*, Oxford: Blackwell Publishing 1984, p. 170–171.

⁴¹ Nozick R., *Anarchy, State and Utopia*, Oxford: Blackwell 1974.

⁴² Kant I., *Uzasadnienie metafizyki moralności*, Warszawa 1984, p. 62.

"But the difference principle requires more. It begins with the thought, congenial to the deontological view, that the assets I have are only accidentally mine. But it ends by assuming that these assets are therefore common assets and that society has a prior claim on the fruits of their exercise. This either disempowers the deontological self or denies its independence."⁴³

Rawls defends himself by maintaining that he does not subject one's end to others but only his/her endowments:

"More specifically, a principle of distribution that regards those talents as a common assets and redistributes their fruits to others cannot be said to violate the self by treating it as a means to social ends; for it is not persons but their attributes that are being so used."⁴⁴

However, this operation does not, in Sandel's opinion, make Rawls immune to his charge. Since we admit that our endowments are owned by a community, and delegated only to individuals, whether arbitrary or not, we must also admit that there is something like common possession. This outcome allows us, as Sandel contends, to resolve the theoretical conflict between the self and its community, favoring the later. And this is one of the fundamental contentions of communitarianism:

"What Sandel is attacking is Rawls's (and liberalism's) fundamental contention that a community is the product of association by independent individuals, and that the worth of that community is to be estimated by the *justice* of the terms upon which those individuals associate. Sandel, like all communitarians, wants to maintain that it makes no sense to think of a community in this way because the very existence of individuals capable of agreeing to form association, or assenting to terms of agreement, *presupposes* the existence of a community."⁴⁵

1.4. Hence the main objective for Sandel was to show the logical contradiction of Rawls's thought. He claims that Rawls presents two different vision of the self in order to enforce his theory. But this makes Rawls's achievement incoherent:

"Either way, the difference principle contradicts the liberating aspiration of the deontological project. We cannot be persons for whom justice is primary and also be persons for whom the difference principle is a principle of justice."⁴⁶

The validity of the two principles of justice must be biased on the conception of a common good which is superior to the personal interest of individuals as parties of the community.

This is a *credo* of Sandel being as well as base of communitarianism. Other accusations against Rawls's liberalism are derived from it. Liberal problems with individualism, relativism, social-historical context ignoring, doubtfully stability of liberal regime, neglecting of civic virtue and universalism of Rawls's project are only a development of this original accusation that formulation Sandel devoted *Liberalism and the Limits of Justice*.

⁴³ Sandel M., op.cit., p. 171.

⁴⁴ Mullhall S. and Swift A., *Liberals and Communitarians*, Cambridge, Mass.: Blackwell Publishing 1992, p. 62.

⁴⁵ Kukathas Ch. and Pettit Ph., *Rawls: A Theory of Justice and Its Critics*, Cambridge: Stanford U.P. 1990, p. 104.

⁴⁶ Sandel M., op.cit., p. 171.

2. *Political...* as an Answer to Critiques

2.1. As was said above, *Political...* can be treated not only as a development of the theory of justice as fairness, but also as an attempt to reject accusations against *A Theory...* by communitarians and Sandel. Attentive analysis of Sandel's objections and a knowledge of *Political...* confirms this.

2.2. The original accusation against *A Theory...* is that it was founded on a false vision of the self which is allegedly detached from any conceptions of the good life, sets of values, and ends. According to the new position presented in *Political...*, this contention is not longer challenging. First of all, the truthfulness of this contention is not an issue now. More important for Rawls is to base its validity on intuitively recognized ideas present in a democratic society. Second, the fact that the working out of principles of justice takes place in the political culture of a democratic regime lets us accept that individuals in the original position are not detached from any conceptions of the good and sets of values. Following intuitively recognized ideas, they support democratic values in the political sphere of activity. In *Political...* one can observe a unique process of the self's grounding within political system. It is necessary to indicate that emphasizing the political (not metaphysical) character of the self in the original position immunizes Rawls to accusations of neglecting the meaning of community in its "embodiment". The influence of a comprehensive doctrine on the non-political set of values, goods, and ends is, according to Rawls, unquestionable. Possible autonomy in this sphere of human activity is not disputable here. However, the issue here is the autonomy of individuals of any reasonable comprehensive doctrines in working out and exercising the two principles of justice in the political sphere.

Bibl. Jaq.

2.3. The accusation of the destructive or false deontology of justice as fairness is easily refutable here. *Political...* develops an idea of primary goods unnecessary in conceiving the two principles of justice. We should again emphasize here the merely political character of Rawls's modified theory.

2.4. This assertion lets us maintain that there is no contradiction between deontological character of justice as fairness and the difference principle as a part of this. Sandel's doubts were founded on a misunderstanding of the deontological character of Rawls's theory and his vision of primary goods, in which distribution is regulated by the difference principle. To disperse these doubts is one of aims of *Political...*

2.5. In *Political ...* Rawls also shows his devotion to the idea of the common good and civic virtue, refuting in this way Sandel's accusation of the anti-social character of justice as fairness. Universalism also is not a topic of dispute now. Justice as fairness is valid only in a society of democratic political culture.

...

After analyzing Sandel's critical comments on *A Theory...* one can argue that he charges Rawls with one very important accusation. He claims justice as fairness is imaginable only as an emanation of the liberal society, understood as liberal in the context of a reasonable comprehensive doctrine. *A Theory...* opts for the autonomy of individuals in all spheres of life. It is a sort of liberal perfectionism that cannot be neutral, lest it might lack stability. This means that Rawls really contradicts canons of

liberal thought or exposes its weaknesses. The idea of a reasonable comprehensive doctrine, presented in *Political...*, is an answer to this questionable conclusion. The essence of this conception, as is noticed above, is contained in the acknowledgment of the meaning of communities in the creation of our individuality. This creation is, however, limited to the non-political sphere in which autonomy is not a predominating value. Perfectionism is not an issue here.

To embody the self in *Political...* does not immunize justice as fairness to all communitarian attacks. A sharp division between "the public" and "the private" results in: opposing the perfectionism of the former to the imperfectionism of the later; and the full autonomy of the self for the former and presumed lack of autonomy for the later. This situation permits a kind of schizophrenia. How else can we call the state in which somebody who is devoted to an anti-liberal comprehensive doctrine is supposed to accept, undoubtedly, liberal public sphere. Rawls's endeavor to limit the scope of comprehensive doctrines to those that are reasonable can be perceived by communitarians as simple intellectual subterfuge, which has nothing to do with reality.⁴⁷ A feeling of schizophrenia will occur not only in the case of individuals who are devoted to liberalism both in the public and the private spheres. If communitarians develop this issue, their critique will remain powerful. Maybe the need to face it will result in another reinterpretation of justice as fairness.

In conclusion we should emphasize that in spite of noticeable modifications conceptions of the original position, good, and liberty and the introduction of a category of reasonable comprehensive doctrines and the very idea of justice as fairness has not changed dramatically. It still remains a vision of justice that for many is the only possible solution under conditions of a pluralistic society such as American one. And to find the proper solution for this country was Rawls's main objective in writing *A Theory of Justice* and *Political Liberalism*.

REFERENCES:

a. Books

- Goodin R.E. and Pettit Ph. (eds), *A Companion to Contemporary Political Philosophy*, Oxford-Cambridge: Blackwell 1995.
- Kymlicka W., *Contemporary Political Philosophy. An Introduction*, Oxford: Oxford University Press 1990.
- Kukathas Ch. and Pettit Ph., *Rawls: A Theory of Justice and Its Critics*, Cambridge: Polity 1990.
- Legutko R., *Dylematy kapitalizmu*, Paris: Editions Spotkania 1986.
- Macedo S., *Liberal Virtues. Citizenship, Virtue and Community in Liberal Constitutionalism*, Oxford: Oxford University Press 1990.
- MacIntyre A., *After Virtue*, Notre Dame: University of Notre Dame Press 1984.
- Whose Justice? Which Rationality?*, London: Duckworth 1988.

⁴⁷ Rawls assumes that reasonable comprehensive doctrines definitely accept conditions of justice as fairness. On the other hand, unreasonable comprehensive doctrines are not protected by the law of the "well-ordered society". (Rawls clarifies this in lecture I, § 6 of *Political...*) Pluralism of comprehensive doctrines is limited to those that are reasonable. Therefore pluralism becomes reasonable as well. Differences between pluralism as such and its reasonable form in the context of the reasonable comprehensive doctrine are shown in *Political...*, p. 63, lecture IV § 2, and § 4.

- Mullhall S. and Swift A., *Liberals and Communitarians*, Oxford-Cambridge: Blackwell 1994.
- Nozick R., *Anarchy, State and Utopia*, Oxford: Blackwell 1974.
- Osiatyński W., *Współczesny liberalizm i konserwatyzm amerykański*, Warszawa: PWN 1984.
- Poggy Th.W., *Realizing Rawls*, Ithaca, New York: Cornell University Press 1989.
- Rawls J., *A Theory of Justice*, Harvard: the President and Fellows of Harvard College 1971.
- Political Liberalism*, New York: Columbia University Press 1993.
- Social Unity and Primary Goods w Utilitarianism and Beyond*, eds., Sen A.K. and Williams B., Cambridge: Cambridge University Press 1982.
- Sadurski W., *Neoliberalny system wartości politycznych*, Warszawa: PWN 1980.
- Sandel M. ed., *Liberalism and Its Critics*, New York 1987.
- Liberalism and the Limits of Justice*, Cambridge: Cambridge University 1982.
- Sterba J., *Justice: Alternative Political Perspectives*, Belmont: Wadsworth PC 1980.
- Taylor Ch., *Human Agency and Language* "Philosophical Papers" Cambridge 1985.
- Sources of the Self*, Cambridge: Cambridge University Press 1990.
- The Ethics of Authenticity*, Harvard: Harvard University Press 1991.
- Walzer M., *Spheres of Justice. A Defense of Pluralism and Equality*, New York: Basic Books 1983.

b. Articles

- Ackerman B.A., "Political Liberalism", *The Journal of Philosophy*, no. 7, 1991.
- Alejandro R., "What is Political about Rawls's Political Liberalism", *The Journal of Politics*, vol. 58, no. 1, 1996.
- Downing L.A. and Thigpen R.B., "Virtue and the Common Good in Liberal Theory", *The Journal of Politics*, vol. 55, no. 4, 1993.
- Etzioni A., "Common Values", *New Statesman & Society*, May 12, 1995.
- "A Moderate Communitarian Proposal", *Political Theory*, vol. 24, no. 2, 1996.
- "The Responsive Community: A Communitarian Perspective", *American Sociological Review*, vol. 61, February 1-11, 1996.
- Klosko G., "Political Constructivism in Rawls's *Political Liberalism*", *American Political Science Review*, vol. 91, September no. 3, 1997.
- "Rawls's *Political* Philosophy and American Democracy", *American Political Science Review*, vol. 87, June no. 2, 1993.
- Rawls J., "Fairness to Goodness", *Philosophical Review*, no. 84, 1975.
- "The Domain of the Political and Overlapping Consensus", *New York University Law Review*, vol. 64, May no. 2, 1989.
- "The Idea of Overlapping Consensus", *Oxford Journal of Legal Studies*, vol. 7, Spring no. 1, 1987.
- "Justice as Fairness; Political not Philosophical", *Philosophy and Public Affairs*, vol. 14, Summer no. 3, 1985.
- "Kantian Constructivism in Moral Theory", *The Journal of Philosophy*, September no. 77, 1980.
- "The Priority of Right and Ideas of the Good", *Philosophy and Public Affairs*, vol. 17, Fall no. 4, 1988.
- Sandel M., "The Unencumbered Self", *Political Theory*, no. 9, 1984.
- Sinopli R.C., "Liberalism and Contested Conceptions of the Good: The Limits of Neutrality", *The Journal of Politics*, vol. 55, no 3, 1993.
- Walzer M., "Philosophy and Democracy", *Political Theory*, no. 9, 1981.
- Wolin Sh., "The Liberal / Democratic Divide. On Rawls's '*Political Liberalism*', *Political Theory*, vol. 24, no. 1, 1996.